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12 IN THE UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,
15
16 Plaintiff,
17
18 v.
19 J. DESHAWN TORRENCE,
20 Defendant.

CASE NO. 1:22-CR-00207-JLT-SKO
STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER
DATE: September 7, 2022
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

21 **BACKGROUND**

22 This case is set for a status conference on September 7, 2022. On May 13, 2020, this Court
23 issued General Order 618, which suspends all jury trials in the Eastern District of California “until
24 further notice.” Under General Order 618, a judge “may exercise his or her authority to continue
25 matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611
26 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s
27 discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-
28 by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order

1 will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and
 2 previous General Orders were entered to address public health concerns related to COVID-19.

3 Although the General Orders address the district-wide health concern, the Supreme Court has
 4 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 5 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 6 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 7 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 8 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 9 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 10 or in writing”).

11 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 12 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 13 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 14 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 15 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 16 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 17 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 18 and the defendant in a speedy trial.” *Id.*

19 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 20 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 21 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 22 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 23 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 24 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*
 25 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 26 following the September 11, 2001 terrorist attacks and the resultant public emergency).

27 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt
 28 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-

exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through defendants’ counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for a status conference on September 7, 2022.
2. By this stipulation, defendant now moves to continue the status conference until October 19, 2022, and to exclude time between September 7, 2022, and October 19, 2022, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].
3. The parties agree and stipulate, and request that the Court find the following:
 - a) The government has represented that the discovery associated with this case includes investigative reports, recordings, photographs, text messages, search warrants, and other items produced in electronic form. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying. In addition, a Department of Justice filter team has independently reviewed material which might be considered excludable under *Garrity v. State of New Jersey*, 385 U.S. 493 (1967), and separately produced the unredacted

1 material which it has reviewed.

2 b) The defense desires additional time to review discovery and conduct further
3 investigation.

4 c) Counsel for defendant believes that failure to grant the above-requested
5 continuance would deny them the reasonable time necessary for effective preparation, taking into
6 account the exercise of due diligence.

7 d) The government does not object to the continuance.

8 In addition to the public health concerns cited by the General Orders and presented by the
9 evolving COVID-19 pandemic, and current BA.4 and BA.5 subvariant strains, an ends-of-justice
10 delay is particularly apt in this case because, in this district, the Court has begun to schedule a
11 limited number of trials with several precautions designed to protect trial participants from
12 possible infection with the coronavirus. For example, the Court plans to hold only one trial per
13 floor at one time, thus limiting the number of trials that can be safely scheduled at any given
14 time.

15 e) Based on the above-stated findings, the ends of justice served by continuing the
16 case as requested outweigh the interest of the public and the defendant in a trial within the
17 original date prescribed by the Speedy Trial Act.

18 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
19 et seq., within which trial must commence, the time period of September 7, 2022 to October 19,
20 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
21 T4] because it results from a continuance granted by the Court at defendants' request on the basis
22 of the Court's finding that the ends of justice served by taking such action outweigh the best
23 interest of the public and the defendants in a speedy trial.

24 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
25 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
26 must commence.

27 IT IS SO STIPULATED.
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1 Dated: August 25, 2022

PHILLIP A. TALBERT
United States Attorney

2
3 /s/ KAREN A. ESCOBAR
KAREN A. ESCOBAR
4 Assistant United States Attorney

5 Dated: August 25, 2022

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

7 /s/ FARA GOLD
FARA GOLD
8 Special Litigation Counsel
9 Criminal Section, Civil Rights Division

10 Dated: August 25, 2022

/s/ Robert L. Baumann
ROBERT L. BAUMANN
11 Counsel for Defendant J. DeShawn Torrence

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16 **ORDER**

17 IT IS SO ORDERED.

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21 DATED: 8/29/2022

Sheila K. Oberto
THE HONORABLE SHEILA K. OBERTO
22 UNITED STATES MAGISTRATE JUDGE
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